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PATENT APPLICATION

ATTORNEY DOCKET NO. 10018569-1IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Heather N. Bean et al.

Application No.: 10/067,658

Filing Date: February 4, 2002

Confirmation No.: 6946

Examiner: Kelly L. Jerabek

Group Art Unit: 2622

Title: VIDEO CAMERA WITH VARIABLE IMAGE CAPTURE RATE AND RELATED METHODOLOGY (as amended)

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on April 13, 2006.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

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Respectfully submitted,

Heather N. Bean et al.

By

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Rev 10/05 (ReplyBri)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT
APPEALS AND INTERFERENCES

In Re Application of:

Heather N. Bean et al.

Serial No.: 10/067,658

Filed: February 4, 2002

For: VIDEO CAMERA WITH
VARIABLE IMAGE
CAPTURE RATE AND
RELATED
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REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed on April 13, 2006, in the above-captioned patent application.

The comments contained herein are intended to be supplemental to those presented in appellants' Appeal Brief filed on February 8, 2006. It is noted that appellants, in this Reply Brief, respond only to certain issues addressed in the Examiner's Answer where response is believed to be warranted. With respect to the remaining issues contained in the Examiner's Answer,

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appellants' position is fully set forth in the Appeal Brief filed on February 8, 2006, and appellants make no admissions or concessions herein regarding these remaining issues.

On page 16 of the Examiner's Answer, the Examiner asserts the following:

The fact that the Lee reference provides a user-controlled external switch for generating the frame rate selection signal (SEL) makes clear that the switch (for producing SEL signals) is necessarily actuatable during continuous image capture.

Appellants respectfully disagree with this assertion. The Examiner reasons that, because Lee et al. provides a frame rate selection switch, the Lee et al. device *must necessarily* be configured to allow actuation of the switch at any time. As appellants point out in the Appeal Brief, however, the Lee et al. switch could be operable in other manners, *for example*, only prior to beginning video capture (see, e.g., Appeal Brief, pages 11-12).

In the paragraph spanning pages 16 and 17 of the Examiner's Answer, the Examiner discusses the operation of the Lee et al. device and concludes the paragraph with following statement:

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Thus, it can be seen the Lee reference includes evidence that suggests that the disclosed device does not operate in the conventional manner of setting a predetermined frame rate as a one time event.

The Examiner supports this statement with reference to col. 1, line 60 through col. 2, line 11 of the Lee et al. reference. This portion of the Lee et al. reference reads as follows:

In light of the foregoing, it is an object of the present invention to provide an image capture apparatus and methods for operating an image capture device at varying frame rates.

It is a another object of the present invention to provide an image capture apparatus and methods that capture image data at varying frame rates without requiring buffering.

These and other objects, features and advantages are provided according to the present invention by applying gate signals to an image capture device for selected fields of a succession of fields responsive to a commanded frame rate, and shuttering the image capture device responsive to the commanded frame rate. Preferably, the commanded frame rate is selected such that the field rate is an integer multiple of the commanded frame rate. In one embodiment, gate signals are generated for each of a succession of fields, but are only applied in selected fields based on the commanded frame rate through the action of a gate enable signal.

Appellants disagree with the Examiner's statement (as reproduced above) and respectfully assert that it is not supported by the cited section of the Lee et al. reference. Although Lee et al. generally discusses varying the frame rate, Lee et al. does not specify when the frame rate is changed and, thus, does not

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suggest "that the disclosed device does not operate in the conventional manner of setting a predetermined frame rate as a one time event", as asserted by the Examiner.

The Examiner states the following on page 18 of the Examiner's Answer:

Appellant's arguments regarding claim 18 (Appeal Brief pages 16-17) challenge the Official Notice and request that a reference be provided to show that it is well known in the art to place user controlled switches on the exterior surface of a camera.

Appellants respectfully point out that the Examiner's statement is in error. Appellants did NOT challenge the Examiner's assertion of Official Notice (i.e., that it is well known in the art to place user-controlled switches on the exterior surface of a camera). Instead, appellants stated the following:

It appears that the Examiner has misunderstood claim 18. The novelty of this claim lies not in the switch being located on the exterior of the camera, but rather in the requirement that the *same switch is used both for the initiation of image data acquisition and [for] varying the frame rate*. Clearly, this limitation is neither disclosed nor suggested in the Lee et al. reference.

(Appeal Brief, page 17, italics in original)

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Thus, appellants were not challenging the Official Notice, but simply pointing out that the Examiner has apparently overlooked a limitation of claim 18 (i.e., that the *same switch is used both for the initiation of image data acquisition and for varying the frame rate*). The Examiner has not provided any explanation (in either the Final Office action or the Examiner's Answer) as to how it is believed that this limitation is met by the prior art (and appellants respectfully assert that this limitation is neither disclosed nor suggested by the prior art of record).

Respectfully submitted,
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June 9, 2006